State of New Hampshire
OFFICE OF ATTORNEY-GENERAL

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1953

Feb. 27

Bert Teague, Admin. Assistant
Office of the Governor
Concord, New Hampshire

Dear Bert:

In a memorandum dated February 26, 1953 you have inquired whether in the opinion of this office legislation to raise the exemption applicable to interest and dividends tax rates to $1000. would be constitutional. You are advised that it is my opinion that it would be.

Such a general exemption would apply to all taxpayers equally and would not constitute a graduated or progressive tax. The power to grant a general exemption has been affirmed by our Supreme Court in an Opinion of the Justices, 82 N.H. 561, 570-575 (1927). Such a general exemption, treating all taxpayers alike, does not discriminate against any individual taxpayer but rather merely affects his liability to tax.

In 1930 in another Opinion of the Justices, 84 N.H. 559, the Supreme Court ruled that a proposed exemption of $3500. for the head of a family plus $400. for each dependent would be excessive in the taxation of personal incomes, and discussing the general subject of exemptions the Court said, at page 572:

> ". . . The house of representatives were then advised that we inclined to the opinion that a general exemption of $2000 could be sustained. The matter then under consideration was the validity of any substantial quantitative exemption. Attention was called to the difficulty in attempting to fix limitations, and the views expressed were declared to be tentative only. Opinion of the Justices, 82 N.H. 561, 570-575. Under the circumstances the doctrine that advisory opinions are not adjudications upon the questions presented is peculiarly applicable.

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"In attempting to fix limits expressed in concrete amounts, it is necessary to deal with facts, and different minds will come to different conclusions. A legislative enactment is not to be declared invalid for lack of constitutional power unless the conclusion is established beyond a reasonable doubt. Rich v. Flanders, 39 N.H. 304; Opinion of the Justices, 77 N.H. 611, 617. Applied to this situation, the test is resolved into an inquiry whether we think a given amount is one which some reasonable men might think came within the reason of the rule. If it is, its use is permitted, even though we think the fact should be found otherwise.

"Applying this test, we are of opinion that an exemption of $1200 to a single person without dependents is as large as could in reason be thought to be valid under the principle limiting the exercise of this power. We also think that reasonable men might conclude that the principle would permit a larger exemption for those with families or dependents, but that this idea cannot be used to raise the largest exemption to a sum exceeding $2000."

It is difficult to know just where the line would be drawn but it is believed that unless the Supreme Court (being differently constituted) alters its previous opinions, that a general exemption of $1000. would be sustained if enacted.

Respectfully,

Louis C. Wyman
Attorney General

w/d